

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ALEXSAM, INC.,	§	
<i>Plaintiff,</i>	§	
v.	§	
	§	Case No. 2:13-cv-0002-MHS-CMC
BEST BUY STORES L.P.,	§	
<i>Defendants.</i>	§	
	§	
	§	
ALEXSAM, INC.,	§	
<i>Plaintiff,</i>	§	
v.	§	
	§	
BARNES & NOBLE, INC. AND BARNES &	§	
NOBLE MARKETING SERVICES CORP.,	§	
<i>Defendants.</i>	§	
	§	
	§	
ALEXSAM, INC.,	§	
<i>Plaintiff,</i>	§	
v.	§	
	§	
THE GAP, INC. AND	§	
DIRECT CONSUMER SERVICES, LLC,	§	
<i>Defendants.</i>	§	
	§	
ALEXSAM, INC.	§	
<i>Plaintiff,</i>	§	
v.	§	
	§	
J.C. PENNEY COMPANY, INC. AND	§	
J.C. PENNEY CORPORATION	§	
<i>Defendants.</i>	§	
	§	

ALEXSAM, INC.	§	
<i>Plaintiff,</i>	§	
v.	§	
MCDONALD'S CORPORATION AND	§	Case No. 2:13-cv-0006-MHS-CMC
P2W, INC. NFP	§	
<i>Defendants.</i>	§	
§	§	
ALEXSAM, INC.,	§	
<i>Plaintiff,</i>	§	
v.	§	
TOYS "R" US—DELAWARE, INC. AND	§	Case No. 2:13-cv-0007-MHS-CMC
TRU-SVC, LLC,	§	
<i>Defendants.</i>	§	
§	§	
ALEXSAM, INC.,	§	
<i>Plaintiff,</i>	§	
v.	§	
HOME DEPOT USA, INC. and	§	Case No. 2:13-cv-0008-MHS-CMC
HOME DEPOT INCENTIVES, INC.,	§	
<i>Defendants.</i>	§	
§	§	

**DEFENDANTS' SUPPLEMENTAL NOTICE OF SUMMARY JUDGMENT AND
DAUBERT FILINGS RELEVANT TO INVALIDITY AND INEQUITABLE CONDUCT**

Pursuant to the Court's Order dated February 25, 2013, on February 28, 2013 the parties filed a Joint Notice of Summary Judgment and *Daubert* Filings Relevant to Invalidity and Inequitable Conduct. (*See, e.g.* 2:13-cv-2 Dkt. No. 62.) Plaintiff Alexsam, Inc. and Defendants Best Buy Stores, L.P., Barnes & Noble, Inc., Barnes & Noble Marketing Services Corp., The Gap, Inc., Direct Consumer Services, LLC, J.C. Penney Company, Inc., J. C. Penney Corporation, Inc., McDonald's Corporation, P2W, Inc. NFP, Toys "R" Us — Delaware, Inc., TRU-SVC, LLC, Home Depot USA, Inc., and Home Depot Incentives, Inc. (collectively, "Defendants") held a meet and confer on March 15, 2013, during which it became apparent to Defendants that the following *Daubert* motions are also applicable to the consolidated invalidity and enforceability trial.

- (1) Best Buy Stores, L.P.'s *Daubert* Motion to Exclude the Opinions of Plaintiff Alexsam, Inc.'s Expert Witness of Damages, James McGovern (2:13-cv-2 Dkt. No. 18).
- (2) Motion to Exclude the Opinions of James L. McGovern (filed in each of the six cases against Barnes & Noble, Inc., Barnes & Noble Marketing Services Corp., The Gap, Inc., Direct Consumer Services, LLC, J.C. Penney Company, Inc., J. C. Penney Corporation, Inc., McDonald's Corporation, P2W, Inc. NFP, Toys "R" Us — Delaware, Inc., TRU-SVC, LLC, Home Depot USA, Inc., and Home Depot Incentives, Inc.) (2:13-cv-3 Dkt. No. 20; 2:13-cv-4 Dkt. No. 21; 2:13-cv-5 Dkt. No. Dkt. No. 23; 2:13-cv-6 Dkt. No. 22; 2:13-cv-7 Dkt. No. 22; 2:13-cv-8 Dkt. No. 22).

Alexsam's witness list, exchanged on March 8, 2013, identified Mr. McGovern, its damages expert, as a witness that it will potentially call at the invalidity and enforceability trial. During the March 15 meet and confer, Defendants inquired as to the basis for Mr. McGovern's testimony, and requested that Alexsam withdraw Mr. McGovern as a potential witness for the

invalidity and enforceability trial. Alexsam refused to withdraw Mr. McGovern, explaining that it may call Mr. McGovern to testify regarding topics related to invalidity and obviousness, including the purported benefits of the claimed invention. Thus, while the Defendants also filed a Motion *in Limine* to exclude Mr. McGovern's testimony at the invalidity and enforceability trial, Defendants believe the above listed *Daubert* motions should also be considered by the Court prior to that trial. Indeed, Defendants have moved to exclude Mr. McGovern's opinions in their entirety. If such motions are granted, Mr. McGovern should be precluded from testifying at all in this case.

After Alexsam refused to withdraw Mr. McGovern, Defendants provided Alexsam with a copy of a draft of the instant notice and inquired as to whether Alexsam would consent to filing it jointly. Alexsam refused to join in the filing as drafted and indicated it disagrees with Defendants' position that the above listed motions are relevant to the invalidity and enforceability trial.

Dated: March 20, 2013

/s/ John K. Harting

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on March 20, 2013. Any other counsel of record will be served by first class mail.

/s/ John K. Harting
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Attorney for Defendant Best Buy Stores, L.P.